THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO. 21646 OF 2005

Dated: 5th October 2005

Between:

G. Mallaiah, S/o Manikyaiah

Aged 39 years, Occu: Conductor, (E-280641), APSRTC,

Gadwal Bus Depot, Mahabubnagar District.

…Petitioner

And

The Deport Manager, APSRTC, Gadwal Bus Deport, Mahabubnagar District. & another.

…Respondents

ORDER:

In this writ petition, the employee of APSRTC challenged the order passed by his employer, imposing the punishment of stoppage of increment, with cumulative effect. The only ground pleaded in this writ petition, is that the punishment of stoppage of increment, with cumulative effect, was imposed, without conducting enquiry. He contends that such a punishment constitutes a major penalty, and it could not have been imposed, without conducting enquiry.

Learned counsel for the petitioner has relied upon the judgment of the Supreme Court in ***KULVANT SINGH GILL V. STATE OF PUNJAB***, and other judgments that have been rendered by the Supreme Court and this Court, following the same.

Learned Standing Counsel for the Corporation, on the other hand, submits

that though the Supreme Court held that the stoppage of increment, with cumulative effect, is a major penalty, there is enormous delay, on the part of the writ petitioner, in challenging the order of punishment, and it is impermissible for him, to claim the benefit of the said judgment, at this point of time.

Identical question was considered by this Court, in W.P.No.6930 of 2003, and in the order dated 23.4.2003, the relevance of the ratio in ***Kulvant Singh Gill's*** case (1 supra), as well as the effect of the delayed challenge to the order of punishment, was considered. It was held that in view of the judgment in ***Kulvant Singh Gill's*** case (1 supra), it is impermissible for the Corporation, to impose the penalty of stoppage of increment, with cumulative effect, without conducting enquiry. When it came to the question of grant of relief, reliance was placed on the judgment of the Supreme Court in ***GURMAIL SINGH v. PRINCIPAL, GOVERNMENT COLLEGE OF EDUCATION,*** and it was observed that the belated challenge to such order may, at the most, result in denial of the monetary benefit, but not the denial of relief, as a whole.

Learned Standing Counsel for the Corporation submits that a Division Bench of this Court allowed the W.A.No.1359 of 2005, setting aside the order passed by the learned Single Judge, granting similar relief. However, the verification of the facts of the said case, discloses that the order of punishment was passed, much before the Supreme Court rendered its judgment in ***Kulvant Singh Gill's*** case (1 supra). It has come on record that in several matters, where the orders of punishment, passed subsequent to 1990, were dealt with by this Court and necessary relief was granted, the Corporation itself implemented it.

The objection raised on behalf of the respondents, as to the delay, cannot be brushed aside, as a whole. The relevant rules in their Service Manual, do not provide for any distinction between stoppage of increments, with cumulative effect, and those without cumulative effect. The distinction between these two kinds of punishments came to be maintained, only by virtue of the judgment of the Supreme Court in ***Kulvant Singh Gill's*** case (1 supra), which was rendered on 13.9.1990. It is by virtue of this precedent, that it became imperative for the respondents, to maintain

the distinction between the two kinds of punishments, and to impose the one for stoppage of increments, with cumulative effect, only after conducting enquiry. For all practical purposes, 1st October 1990, can be taken as the cut off date, for application of this principle.

For the foregoing reasons, the writ petition is disposed of, with the following directions:

a. The order passed by the Corporation, subsequent to 1.10.1990, directing stoppage of increment, with cumulative effect, without conducting any departmental enquiry, is held to be illegal.

b. So far as the grant of consequential relief is concerned, the petitioner shall not be entitled for monetary benefit, on account of their belated challenge to the order of punishment. The impugned order shall be treated, as those inflicting such punishment, without cumulative effect, but not entitling the petitioner for any monetary benefit, in the form of payment of arrears, on that account. The petitioner shall be entitled for the benefit of this order, prospectively.

There shall be no order as to costs.

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L.NARASIMHA REDDY,J

Date: 5th October, 2005

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